APPENDIX A

IN THE COURT OF APPEAL

FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA, Petitioner, v. SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF SAN DIEGO, Respondent. RICHARD M. COPELAND, JR., and SANDEE L. PETERSON, Real Parties in Interest.	4 Civ. No. 9139 Court of Appeal - Fourth Dist. FILED MAY 17 1968 GEO. J. KOBELIN, Clerk /s/ Erwin J. Luszynski Deputy Clerk

OPINION

PROCEEDING under Penal Code, section 1538.5(o), for writ of mandate or prohibition to contest a superior court order suppressing evidence. Joseph A. Kilgarif,

Judge. Writ of prohibition granted.

James Don Keller, District Attorney and Richard H. Bein, Deputy District Attorney, for Petitioner.

Hecsh, Hegner & Philbin and Michael S. Hegner, for Real Parties in Interest.

The People petition for a writ of mandate or prohibition under Penal Code, section 1538.5(o), to contest a superior court decision (1) concluding an arrest warrant was invalid, and (2) suppressing evidence because of the warrant's invalidity.

About midnight, June 28, 1967, Sheriff Deputies Wigginton and Olmstead, while patrolling a high intensity narcotics area near Palm City, a few miles north of the border with Mexico, saw a 1950 Oldsmobile with its interior lights on, parked by a reservoir. Two people were moving around outside the vehicle, but were inside it by the time the deputies reached the vehicle to investigate. Male driver Copeland and female passenger Peterson (Real Parties in Interest) identified themselves.

Copeland said Tom Harris owned the car, but the registration slip identified the owner as Victor Earl Harris. Suspecting the car might be stolen, Olmstead placed a radio check on the car and its occupants. The return, about five minutes later, indicated the car was not stolen, but there might be a warrant outstanding for Copeland's arrest. Awaiting more radio information on the warrant, the deputies asked for Copeland's permission to search the car. According to Copeland:

"I told the officer that the car had been -- did

belong to somebody that had been in trouble before for narcotics, yes, and, therefore, I did not want to be searched."

He also exclaimed "Either arrest me or let me go."

Thirty to forty minutes after learning of the possible warrant, the deputies learned there was an outstanding misdemeanor arrest warrant good for night time service on Copeland. The misdemeanor warrant for Copeland's arrest resulted from his failure to appear for a traffic violation (Veh. Code, §40508(a)). Wigginton opened the car door, arrested Copeland, and, as Copeland got out of the car, saw a marijuana cigarette in plain view on the front seat. The deputies then searched the car and found the marijuana evidence the superior court later suppressed.

Within twenty days after a traffic violator fails to appear, after promising to appear, a warrant issues under Vehicle Code, section 40515. A computer generates the warrant. No magistrate ever sees it. A court clerk affixes a magistrat's signature facsimile stamp and attaches an IBM bail card. The clerk sends the warrant to the serving marshal.

The superior court determined:

1) The deputies reasonably stopped and questioned defendants; asked for identification; made a radio check to see if the car was stolen, and incidentally asked for a check on defendants; detained defendants while awaiting word after learning of a possible warrant (not knowing if misdemeanor or felony).

2) A court clerk affixed the docket entry in

Copeland's traffic case reading: "Deft. not appearing, 40508 VC complaint & warrant ordered; bail"; affixed the judge's signature facsimile stamp, without the judge ever seeing the warrant.

3) Copeland's arrest warrant is invalid because it fails to satisfy Penal Code, sections 813 and 815 requiring a magistrate to issue and sign an arrest warrant after satisfied by a complaint the offense has been committed and there is reasonable ground to believe defendant committed it.

4) The evidence seized after unlawful arrest must be suppressed.

The determinative statutes in this matter are Vehicle Code, section 40515, and Penal Code, section 853.8. Vehicle Code, section 40515, declares in part:

> "When a person signs a written promise to appear at the time and place specified in the written promise to appear and has not posted bail, the magistrate shall issue and have delivered for execution a warrant for his arrest within 20 days after his failure to appear before the magistrate . . . . "

Penal Code, section 853.8, involving citations for misdemeanors, recites:

> "When a person signs a written promise to appear at the time and place specified in the written promise to appear and has not posted bail as provided in Section 853.6, the magistrate shall issue and have delivered for execution a warrant for his arrest

within twenty (20) days after his failure to appear as promised."

These sections by their language do not reguire a magistrate to determine from a complaint if an offense occurred and if reasonable grounds implicate defendant, as generally required by Penal Code, section 813. The offense, failure to appear, occurs in front of the magistrate, satisfying in every case the requirements of Penal Code, section 813, and People v. Sesslin, 68 A. C. 431. The clerk's docket entry indicates at the time of non-appearance before the magistrate, the magistrate ordered a warrant issued. Neither Vehicle Code, section 40515, nor Penal Code, section 853.8 requires the magistrate to sign the arrest warrant issued, as generally required by Penal Code, section 815. These sections, we believe, exempt Vehicle Code, section 40515, and Penal Code, section 853.8, failure to appear arrest warrants from the signature requirement of Penal Code, section 815. The arrest warrant, arrest, and any search or seizure here, therefore, were valid.

Let a writ of prohibition issue prohibiting the superior court from suppressing the seized marijuana evidence. This Court's April 3, 1968 restraining order is vacated.

/s/ BROWN
P. J.

WE CONCUR:

/s/ COUGHLIN
J.

/s/ WHELAN
J.

APPENDIX B

STATE OF CALIFORNIA
CLERK'S OFFICE

COURT OF APPEAL
FOURTH APPELLATE DISTRICT
DIVISION ONE
6010 STATE BLDG.

San Diego, Cal. June 14, 1968.

No. 4 Civil 9139

People etc.

v.

SUPERIOR COURT etc,

By the Court:

The petition for rehearing is denied.

Brown, P.J.

GEORGE J. KOBELIN, Clerk

By /s/ R.J. Smith
Deputy

12716-114 8-67 1M OSP

APPENDIX C

CLERK'S OFFICE SUPREME COURT
4250 STATE BUILDING

San Francisco, California 94102

JUL 10 1968

Dear Sir: I have this day filed Order

HEARING DENIED

In re: 4 Civ. No. 9139

People, etc.

vs.

Superior Court, San Diego, Ca.
Copeland

Respectfully,

WILLIAM I. SULLIVAN

Clerk

19174-877 3-68 2500 OSP

APPENDIX D

CITY OF IMPERIAL BEACH
POLICE DEPARTMENT

No. Z 7742

DRIVER'S LIC. NO. H5779?6 PHONE NUMBER

DRIVER'S NAME RICHARD MILTON COPELAND JR

ADDRESS 1214 GEORGIA CITY I.B.

SEX	HEIGHT	WEIGHT	BIRTH DATE MONTH	DAY	YEAR	AGE
M ☐ F ☐	FT. 5 IN. 10	160	11	23	42	24

OCCUPATION NOT EMPLOYED EMPLOYED REG. OWNER YES ☐ NO ☑

VEH. YR	MAKE	TYPE	LICENSE NUMBER	STATE	COLOR
55	PONTIAC	PST492	CAL	GRY	

LOCATION

TIME 10 05 A.M. ☐ P.M. ☒ MONTH 4 DAY 20 YEAR 67

LOCATION OF OCCURANCE	DIRECTION	APPROX. SPEED	ZONE/MAX.	ACCIDENT YES ☐ NO ☒
	W	30	25	

W ON CORONADO AT CONN

VIOLATION

☐ MUNICIPAL CODE ☒ VEHICLE CODE 27150

EXPLANATION EXCESSIVE NOISE
DEFECTIVE MUFFLER

BUS. ☐ RES. ☑ RURAL ☐ SCHL. ☐ FRWY. ☐

WEATHER RAIN	WEATHER FOG	TRAFFIC HEAVY	TRAFFIC MED.	TRAFFIC LIGHT ☑	CONDITION OF ROAD NARROW	CURVE	HILL	SLIPPERY	NO. OF LNS.
									4

DISTANCE FROM: SIGNAL LIGHT FEET PEDESTRIAN FEET OTHER VEHICLE FEET

HAZARD TO: PED. ☐ VEH. ☐ NEAR ACCIDENT ☐ SIGNAL GIVEN YES ☐ NO ☐

You are notified to appear before the Municipal Court Judge, South Bay Department, 260 Guava, Chula Vista. DUE TIME 9:30 A MONTH 5 DAY 8 YEAR 67

I PROMISE TO APPEAR AT THE TIME AND PLACE DESIGNATED HEREON. SIGNING THIS CITATION IS NOT AN ADMISSION OF GUILT.

SIGNATURE R. M. Copeland Jr. AGE 24

ADDRESS 1214 Georgia St I.B.

ISSUING OFFICER J Zurcher BADGE NO. LT DIV. D WATCH 4-12

D.O. M&T VAC. PASSED

IN THE MUNICIPAL COURT
SAN DIEGO JUDICIAL DISTRICT

No. 27742

CRIMINAL DOCKET

TRAFFIC

SOUTH BAY DEPARTMENT

The People of the State of California,
Plaintiff,

vs.

Richard Milton Copeland Jr
Defendant

CHARGE

Count 1 Vio. Sec. 27150 VC

Count 2 Vio. Sec. .....

Count 3 Vio. Sec. .....

Count 4 Vio. Sec. .....

PROCEEDINGS

The undersigned waives the filing of a verified complaint herein, and requests and consents that the prosecution proceed on the original citation attached hereto to be set for trial as shown below.

Attorney for Defendant..... DEFENDANT

.....Bail set at $.....& Pen. Asst. $.....

.....Bail Deposited $.....& Pen. Asst. $.....

MAY 29 1967 Deft. not appearing, 40508 VC complaint & warrant ordered; bail: $ 25 10 3 PA

MAY 29 1967 WARRANT ISSUED

JUN 29 '67 40508 C.V.C. Notice Mailed

JUN 30 '67 Warrant returned unserved.

JUN 28 1967 BAIL DEPOSITED $35 - # 10284 J and $3 PA by self

JUN 30 1967 Set for appearance. 7-3-67 0930

JUL 3 1967 The defendant appears in open court for arraignment. Defendant is advised before being arraigned that he has a right to be represented by counsel at this and every stage of the proceedings and that, if he is unable to provide his own counsel, the Court would assign counsel to aid him. Defendant is advised of all of his statutory and constitutional rights including his right to a speedy trial, as set forth in Penal Code section 1382, and the Court explains to defendant and the effect of his consent to and his waiver of his rights under Penal Code section 1382. Defendant is fully informed of the charges against him and the elements of the crime so charged.
The Court finds that defendant freely and expressly stated that he heard the declaration of his rights and the charges against him and that he understood same.

Reported to Motor Vehicle Dept. JUL 11 1967

Case called; Defendant not counsel for. Defendant not appearing or answering. bail ordered forfeited.

William T. Lowe

Jr

SS	TRF	LLS	CONTROL DATE	COMPLAINT NO.	CONVICTION DATE	COURT	OPR. LIC. NO.	SECTIONS VIOLATED	AMT.
			11 23 66	2CC7C5C	02 21 67	3	B0785890	25956B 40508A	
			11 23 66	2CC7C5C	02 21 67	3	NONE	12951A	
			11 23 66	2CC7C5C	02 21 67	3	B0785890		

PRIOR ADJUDICATED COMPLAINTS

VC	PR	VC/PC - PENALTY ASSESSMENT COMPUTED								PR - PROOF OF CORRECTION REQUIRED							
10.5C																	
211.5C																	
		1st	2nd	3rd	4th	5th	6th	7th	8th	1st	2nd	3rd	4th	5th	6th	7th	8th

CURRENT VIOLATIONS

TOTAL BAIL (excluding P.A.)	$ 10.00
TOTAL PENALTY ASSESSMENT	$ 3.00
TOTAL BAIL (including P.A.)	$ 13.00

TOTALS SECTION

BIRTH DATE	S/E	OPR. LICENSE NUMBER	S/V/E
11 23 42	M		

SOUTH BAY

CL 0808 KLEINAKE M | 05 08 67 | | 04 20 67 | 07 24 67 | Z0077A2

LLS - LOCAL LICENSE SUSPENSION | TRF - TRAFFIC SCHOOL | SS - CONDITIONAL SUSPENSION

APPENDIX E

COPELAND RICHARD M — SOUTH BAY — MANDATORY APPEARANCE

IN THE MUNICIPAL COURT OF THE SAN DIEGO JUDICIAL DISTRICT

220 WEST BROADWAY

COUNTY OF SAN DIEGO, STATE OF CALIFORNIA

COMPLAINT - TRAFFIC (FAILURE TO APPEAR-40508a V.C.)

THE PEOPLE OF THE STATE OF CALIFORNIA
PLAINTIFF,

VS.

E: COPELAND RICHARD M AKA

ESS. 1214 GEORGIA ST DEFENDANT

IMPERIAL BEACH CA

CASE NO. Z007742 042467

FILE DATE: 05-29-67

APPEARANCE DATE: 05-08-67

CITATION DATE: 04-20-67 VIOLATIONS: 27150

RIPTION:

DOB 11-23-42 SEX M HAIR EYES HT. 5-10 WT. 160 V/L VEH. 55P020T

TOTAL BAIL $38.00 PR 40508: 2 10 PA

HE UNDERSIGNED, UPON INFORMATION AND BELIEF, COMPLAINS THAT THE ABOVE-NAMED DEFENDANT VIOLATD HIS WRITTEN PROMISE TO APPEAR IN THE ABOVE-ENTITLED COURT UPON A TRAFFIC CITATION ON THE APPEARNCE DATE ABOVE SET FORTH, CONTRARY TO THE PROVISIONS OF SECTION 40508a OF THE VEHICLE CODE OF THE TATE OF CALIFORNIA, A MISDEMEANOR.

AID COMPLAINANT PRAYS THAT A WARRANT FOR THE ARREST OF SAID DEFENDANT BE ISSUED SO THAT HE MAY E DEALT WITH ACCORDING TO LAW.

CERTIFY UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

XECUTED AT San Diego ON MAY 26 1967

M. Mussen
COMPLAINANT

Defendant's Exhibit A

Identification DEC 15 1967 (DATE)

Evidence DEC 15 1967 (DATE)

In case of

People of the State of California
Pltf.

vs.

Copeland, R
Deft.

CC No. 12212

R. B. JAMES, County Clerk

By H. H. PEECK, Deputy

Dept. Z

Form 27 SM

COUNTY OF SAN DIEGO, STATE OF CALIFORNIA

APPENDIX F

WARRANT OF ARREST (FAILURE TO APPEAR-40508a V.C.)

THE PEOPLE OF THE STATE OF CALIFORNIA
PLAINTIFF,
vs.

MARSHAL'S NO. 1

NAME: COPELAND RICHARD M AKA

CASE NO. ZC07742 04246

ADDRESS: 1214 GEORGIA ST DEFENDANT

ISSUE DATE: 05-29-67

IMPERIAL BEACH CA

APPEARANCE DATE: 06-08-67

CITATION DATE: 04-20-67 VIOLATIONS: 27150

DESCRIPTION:

O/L DOB 11-23-42 SEX M HAIR EYES HT. 5-10 WT. 160 V/L VEH. 55P020T

TOTAL BAIL $ 48.00 PR 40508: 2 10 PA 3
(Includes penalty assessment)

THE PEOPLE OF THE STATE OF CALIFORNIA, TO ANY PEACE OFFICER IN THIS STATE:

COMPLAINT HAVING BEEN FILED THIS DAY STATING THAT ON THE ABOVE-STATED APPEARANCE DATE THE OFFENSE OF VIOLATION OF SECTION 40508a OF THE VEHICLE CODE OF THE STATE OF CALIFORNIA, A MISDEMEANOR, HAS BEEN COMMITTED, AND ACCUSING THE ABOVE-NAMED DEFENDANT THEREOF;

YOU ARE THEREFORE COMMANDED TO FORTHWITH ARREST THE ABOVE-NAMED ACCUSED AND BRING HIM BEFORE A JUDGE OF THE ABOVE-ENTITLED COURT, OR IN THE CASE OF HIS ABSENCE OR INABILITY TO ACT, BEFORE THE NEAREST AND MOST ACCESSIBLE MAGISTRATE OF SAN DIEGO COUNTY; OR, IF DEFENDANT IS ARRESTED IN ANOTHER COUNTY BEFORE A MAGISTRATE OF THAT COUNTY, IF SO REQUESTED BY THE DEFENDANT.

THIS WARRANT MAY BE SERVED AT NIGHT. DEFENDANT IS TO BE ADMITTED TO BAIL IN THE TOTAL AMOUNT SHOWN ABOVE.

MAY 29 1967

Frank H. Gotbusch Jr.

In the Municipal Court, San Diego Judicial District
COUNTY OF SAN DIEGO, STATE OF CALIFORNIA

I, JOHN H. PETERSEN, Clerk of the Municipal Court of the San Diego Judicial District, County of San Diego, State of California, do hereby certify that the annexed instrument is a true and correct copy of the original, as shown by the files and records of said cause, in my official custody.

Witness my hand and seal this 18th day of September, 1967

JOHN H. PETERSEN, Clerk

By Geraldine Kaiser, Deputy

Form 60 Mun. 4-60 1M Plaza

EXHIBIT NO. 3

PEOPLE,
Plaintiff,
vs.
Richard M. Copeland et al
Defendant.

D.A. No.
Wickersham

Date September 20 1967

Elisabeth R. Stephen-Hassard
Reporter

MARSHAL MUNICIPAL COURTS, SAN DIEGO COUNTY

WARRANT ABSTRACT
(Refer 842 P.C.)

NAME: COPELAND , RICHARD M.

WARRANT NO.: Z 007742

DESCRIPTION: M 5-10 160# DOB 11-23-42

BAIL: $ 38.00

ISSUING AGENCY: Marshal, San Diego County

CHARGE: 27150 CVC

DATE ISSUED: 5-26-67

COURT: S.D. MUNI.

JUDGE: NOTTBUSCH

MANDATORY APPEARANCE: YES NO

NIGHT SERVICE: YES NO

DATE: 6-29-67 TIME: 12:30 PM

WARRANT IS PRESENTLY AT: C.V. M.O. (CURRY)

WARRANT WILL BE FORWARDED WHEN RETURNED TO THIS OFFICE.

WILLIAM F. HOWELL, MARSHAL

By: _____ (Deputy Marshal)

JUN 29 1967

$38.00 CASH BAIL

POSTED BY: _____

SDM 87 Rev. 3/66

TO APPEAR Metro Ct.

7-3-67 @ 8:30 A.M.

In the Municipal Court, San Diego Judicial District
COUNTY OF SAN DIEGO, STATE OF CALIFORNIA

I, JOHN H. PETERSEN, Clerk of the Municipal Court of the San Diego Judicial District, County of San Diego, State of California, do hereby certify that the annexed instrument is a true and correct copy of the original, as shown by the files and records of said cause, in my official custody.

Witness my hand and seal this 18th day of September, 1967.

JOHN H. PETERSEN, Clerk

By Geraldine Kaiser, Deputy

Plaintiff's Exhibit 1

Identification (DATE)

Evidence (DATE)

In case of

Plff.

vs.

Deft.

CR No. 12313

R. B. JAMES, County Clerk

APPENDIX G

IN THE COURT OF APPEAL

FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA, by JAMES DON KELLER, District Attorney for the County of San Diego,	)	
Petitioner,	)	
vs.	)	
SUPERIOR COURT OF THE STATE OF CALIFORNIA, for the County of San Diego,	)	4 Civ. No. 9139
Respondent.	)	
RICHARD M. COPELAND, JR., and SANDEE L. PETERSON,	)	
Real Parties in Interest.	)	

PEREMPTORY WRIT OF PROHIBITION

BY THE COURT:

It is ordered by this Peremptory Writ of Prohibition that the Respondent Court is prohibited from suppressing the evidence included within its order entered January 17, 1968, under Section 1538.5 of the Penal Code.

It is further ordered that this Court's April 3, 1968, restraining order be and the same is hereby vacated.

Dated:

/s/ BROWN
Presiding Justice.

EXHIBIT H

COURT OF APPEAL - STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION ONE

PEOPLE ETC, BY JAMES DON KELLER, DISTRICT ATTORNEY, SAN DIEGO COUNTY,	)	
Petitioner,	)	
vs.	)	4 Civil
SUPERIOR COURT ETC, SAN DIEGO COUNTY,	)	No. 9139
Respondent,	)	
RICHARD M. COPELAND, JR., ET AL,	)	
Real Parties in Interest.	)	(COPY)

BY THE COURT:

Upon filing Petition for Writ of Mandamus and Prohibition and good cause appearing, the respondent and real parties in interest are ordered to show cause before this court, Division One, 6010 State Building, San Diego, California, on May 14, 1968, at ten a.m., why the writ should not issue as prayed.

Dated March 19, 1968

BROWN, P. J.

11921-114 7-67 8M OSP

EXHIBIT I

COURT OF APPEAL - STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE OF THE STATE OF CALIFORNIA, by JAMES DON KELLER, District Attorney, SAN DIEGO COUNTY,	No. 4 Civil 9139
Petitioner,	Court of Appeal - Fourth Dist
vs.	FILED APR 4 1968
THE SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF SAN DIEGO,	GEORGE J. KOBELIN, Clerk
Respondent,	/s/ GEORGE J. KOBELIN
RICHARD M. COPELAND, JR., and SANDEE L. PETERSON,	
Real Parties in Interest.	

BY THE COURT:

An Order to show cause why a Writ of Mandamus and Prohibition should not issue having been granted in the above-entitled matter, until further order of this Court the Superior Court of San Diego County is restrained

from further proceedings in the case titled People of the State of California vs. Richard M. Copeland, Jr., and Sandee L. Peterson, No. CR 12313.

Dated: 4/3/68 /s/ BROWN P.J.